

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

August 28, 2009

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

GL S- 5721

Hawaii

Request for Approval of Special Installment Agreement for Payment of
Percentage Rent under General Lease No. S-5721 to Kona Blue Water Farms,
LLC, Kalaoa 1st through 4th, North Kona, Hawaii, Tax Map Key: 3rd/7-3-43:
seaward of Kalaoa.

LESSEE:

Kona Blue Water Farms, LLC, P.O. Box 4239, Kailua-Kona, HI 96745.

LEGAL REFERENCE:

Board policy of January 28, 2000, Item D-19, as amended.

LOCATION AND AREA:

Portion of Government submerged lands situated at offshore of Kalaoa 1st through 4th,
North Kona, Hawaii, identified by Tax Map Key: 3rd/7-3-43: seaward of Kalaoa,
consisting of approximately 90.00 acres more or less as shown on the attached map
labeled Exhibit A.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

LEASE CHARACTER OF USE:

Mariculture purposes.

TERM OF LEASE:

20 years, commencing on November 1, 2004 and expiring on October 31, 2024. The first and only rental reopening is scheduled for November 1, 2014.

ANNUAL RENTAL:

For the first ten years, \$2,100.00 per annum or 1% of the gross revenue, whichever is greater.

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>X</u>	NO <u> </u>
Registered business name confirmed:	YES <u>X</u>	NO <u> </u>
Applicant in good standing confirmed:	YES <u>X</u>	NO <u> </u>

REMARKS:

By letter dated June 2, 2009, Neil Sims (then president and now chief executive officer) of Kona Blue Water Farms, LLC (Lessee) requested approval to pay accrued percentage rent in the amount of \$57,990.82 for the lease year ending October 2008 in four quarterly installments of \$14,497.71 beginning July 1, 2009. A copy of Mr. Sims' letter is attached as Exhibit B. In subsequent communications with staff, Mr. Sims indicated that Lessee was agreeable to paying interest at the rate of 7% per annum on the declining principal balance of the unpaid rent.

The annual lease rent in the ten-year period ending October 31, 2014, is \$2,100.00 or 1% of gross revenues, whichever is higher. "Gross revenue" means "all receipts, income and revenue derived from, related to, or connected with all sources within the leased premises relating to mariculture operations permitted by this lease excluding, however, state excise tax collected."

Mr. Sims states in his letter that "[o]ur company is presently undergoing a reconfiguration of our operations offshore, in order to attain improved production efficiencies, and some level of profitability. With this, and the present economic situation, we are severely cash constrained at the moment."

Mr. Sims' letter sets forth an anticipated first payment date of July 1, 2009. However, as staff was not able to bring this matter to the Board in June due to uncured defaults discussed below, staff is proposing that the initial payment be made by September 1, 2009, with the three subsequent payments being made on December 1, 2009, March 1, 2010, and June 1, 2010. Below is the amortization schedule for this obligation, with interest accruing as of September 1, 2009.

No.	Due Date	Payment	Interest	Principal	Balance
					\$57,990.82
1	9/1/09	\$14,877.13	\$0.00	\$14,877.13	43,113.69
2	12/1/09	14,877.13	754.49	14,122.64	28,991.05
3	3/1/10	14,877.13	507.34	14,369.79	14,621.26
4	6/1/10	14,877.13	255.87	14,621.26	0.00
Totals:		\$59,508.52	\$1,517.70	\$57,990.82	

As is evident from the schedule, the quarterly payment will need to be \$14,877.13 in order to amortize the debt at 7% interest. The interest rate and amortization schedule have been reviewed by Land Division's Fiscal Office for accuracy.

Additionally, Lessee would continue to make semi-annual payments of the fixed rental component under the lease.

With the exception of percentage rent, the Lessee is compliant with all lease terms and conditions including rent, insurance and performance bond. A notice of default for failure to post liability insurance was sent by certified mail to Lessee's record address in San Francisco on March 25, 2009, but was returned unclaimed. A notice of default for non-payment of percentage rent was sent by certified mail to the San Francisco on March 31, 2009, but was returned unclaimed. The notice of default for non-payment of percentage rent was sent to the San Francisco address by certified mail in a second attempt at delivery on July 6, 2009.

On July 9, 2009, Mr. Sims advised staff by telephone that the San Francisco office had been closed. He requested all further correspondence to be sent to a local post office box in Kailua-Kona. The notices of default were re-sent to the new address by certified mail on July 9, 2009. The insurance default was timely cured on August 14, 2009.

Lessee timely petitioned Land Division for acceptance of an installment plan. The first and only rental reopening under the lease is scheduled for November 1, 2014. There are no existing special installment agreements on the subject lease. There are no substantial improvements on the property that will revert State ownership upon termination of the lease.

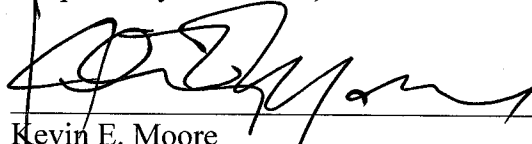
RECOMMENDATION:

In light of the economic hardship cited by Lessee and the proposal for bringing the delinquency current by June 2010, staff is recommending that the Board accept Lessee's proposal for paying the percentage rent on an installment basis subject to the 7% interest rate and on the other conditions cited above which are by this reference incorporated herein, and further subject to the following terms and conditions:

August 28, 2009

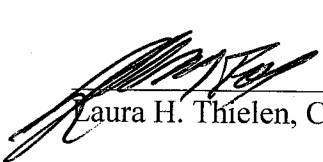
1. The principal amount due is \$57,990.82.
2. Lessee shall pay to DLNR an initial payment of \$14,877.13 due by September 1, 2009. Thereafter, Lessee shall make three installment payments of \$14,877.13 including interest to DLNR on or before December 1, 2009, and March 1 and June 1, 2010.
3. The interest rate applicable to the payments under the installment plan is 7% per annum. Interest will begin accruing as of September 1, 2009.
4. Prepayments may be made without penalty.
5. Lessee agrees to keep its regular fixed rent payments current (\$2,100.00 per annum paid semi-annually).
6. Any delinquent installment payment will be charged a \$50.00 late fee plus 1% interest for any month or portion thereof a payment remains unpaid. In addition, a late installment payment shall constitute a breach under the lease. If such breach is not cured within 60 days after delivery to Lessee of a notice of default, the lease shall be subject to forfeiture in accordance with its terms and conditions. Land Division may also refer the matter of collecting all monies due to the State to the Department of the Attorney General or the collection agency contracted by the Department for appropriate action.
7. With the exception of the September 1, 2009 payment, Land Division's Fiscal Office shall bill Lessee quarterly for the installment payments due.

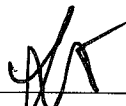
Respectfully Submitted,



Kevin E. Moore
District Land Agent

APPROVED FOR SUBMITTAL:



Laura H. Thielen, Chairperson

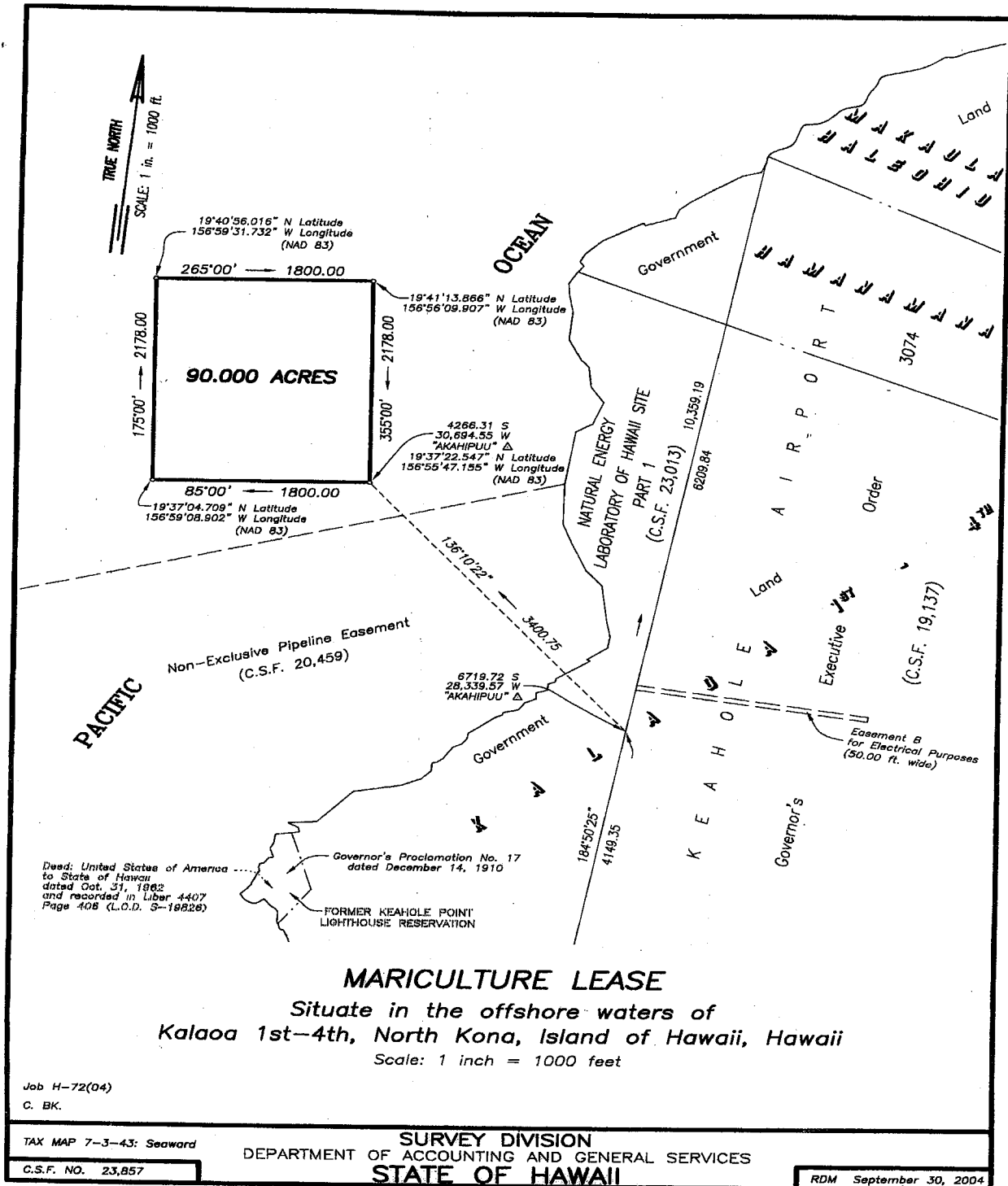


EXHIBIT A